



Reprinted
April 7, 2009

ENGROSSED SENATE BILL No. 238

DIGEST OF SB 238 (Updated April 6, 2009 4:10 pm - DI 107)

Citations Affected: IC 11-13; IC 25-38.1; IC 31-9; IC 35-33; IC 35-38; IC 35-41; IC 35-46; noncode.

Synopsis: Crimes against animals. Authorizes the court, as a condition of bail or parole, or the parole board, as a condition of parole, to prohibit a person from owning, harboring, or training an animal, and, if the person is prohibited from having direct or indirect contact with an individual, from having direct or indirect contact with any animal belonging to the individual. Provides that a veterinarian or registered veterinary technician may report a suspected incident of animal cruelty under the law concerning offenses relating to animals to a law enforcement officer. Provides that a person neglects an animal for purposes of the animal cruelty statute if the person restrains the animal in a manner that causes the animal to suffer: (1) serious permanent disfigurement; (2) serious temporary disfigurement; (3) permanent or protracted loss or impairment of the function of a bodily part or organ; or (4) a fracture. Provides that a person neglects an animal if the person fails to provide reasonable medical care for an animal's injury or illness. Broadens the definition of torturing an animal by administering poison by applying the definition to all vertebrate animals. (Current law applies only to dogs or cats.) Makes abandoning or neglecting an animal a Class A misdemeanor, and enhances the penalty to a Class D felony if the person has a prior conviction. Makes it killing a domestic animal, a Class D felony, for a person to knowingly or intentionally kill a domestic animal without the consent of the owner of the domestic animal.

Effective: July 1, 2009.

Merritt, Lubbers

(HOUSE SPONSORS — LAWSON L. SULLIVAN)

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 19, 2009, amended, reported favorably — Do Pass.

February 23, 2009, read second time, ordered engrossed. Engrossed.

February 24, 2009, read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

March 2, 2009, read first time and referred to Committee on Judiciary.

April 2, 2009, amended, reported — Do Pass.

April 6, 2009, read second time, amended, ordered engrossed.

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ES 238—LS 7374/DI 106+



Reprinted
April 7, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 238

A BILL FOR AN ACT to amend the Indiana Code concerning
animals.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-13-3-4, AS AMENDED BY P.L.46-2008,
2 SECTION 1, AND AS AMENDED BY P.L.119-2008, SECTION 10,
3 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A condition to remaining on
5 parole is that the parolee not commit a crime during the period of
6 parole.
7 (b) The parole board may also adopt, under IC 4-22-2, additional
8 conditions to remaining on parole and require a parolee to satisfy one
9 (1) or more of these conditions. These conditions must be reasonably
10 related to the parolee's successful reintegration into the community and
11 not unduly restrictive of a fundamental right.
12 (c) If a person is released on parole, the parolee shall be given a
13 written statement of the conditions of parole. Signed copies of this
14 statement shall be:
15 (1) retained by the parolee;
16 (2) forwarded to any person charged with the parolee's
17 supervision; and

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(3) placed in the parolee's master file.

(d) The parole board may modify parole conditions if the parolee receives notice of that action and had ten (10) days after receipt of the notice to express the parolee's views on the proposed modification. This subsection does not apply to modification of parole conditions after a revocation proceeding under section 10 of this chapter.

(e) As a condition of parole, the parole board may require the parolee to reside in a particular parole area. In determining a parolee's residence requirement, the parole board shall:

(1) consider:

(A) the residence of the parolee prior to the parolee's incarceration; and

(B) the parolee's place of employment; and

(2) assign the parolee to reside in the county where the parolee resided prior to the parolee's incarceration unless assignment on this basis would be detrimental to the parolee's successful reintegration into the community.

(f) As a condition of parole, the parole board may require the parolee to:

(1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9); and

(2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

(1) may require a parolee who is a sex offender (as defined in IC 11-8-8-4.5) to:

(A) participate in a treatment program for sex offenders approved by the parole board; and

(B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

(i) receives the parole board's approval; or

(ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5) to register with a local law enforcement authority under IC 11-8-8;

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(B) prohibit a parolee who is a sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole, unless the sex offender obtains written approval from the parole board;

(C) prohibit a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the sex offender's sex offense unless the sex offender obtains a waiver under IC 35-38-2-2.5; *and*

(D) prohibit a parolee who is a sex offender from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age;

(E) *require a parolee who is a sex offender to consent:*

(i) to the search of the sex offender's personal computer at any time; and

(ii) to the installation on the sex offender's personal computer or device with Internet capability, at the sex offender's expense, of one (1) or more hardware or software systems to monitor Internet usage; and

(F) *prohibit the sex offender from:*

(i) accessing or using certain web sites, chat rooms, or instant messaging programs frequented by children; and

(ii) deleting, erasing, or tampering with information on the sex offender's personal computer with intent to conceal an activity prohibited by item (i).

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) or a sex offender who is an offender against children under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

(h) The address of the victim of a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) is confidential, even if the sex offender obtains a waiver under IC 35-38-2-2.5.

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

(j) As a condition of parole, the parole board:

(1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and

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(2) may require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5);
to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location.

(k) As a condition of parole, the parole board may prohibit, in accordance with IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

(l) As a condition of parole, the parole board may prohibit a parolee from owning, harboring, or training an animal, and, if the parole board prohibits a parolee from having direct or indirect contact with an individual, the parole board may also prohibit the parolee from having direct or indirect contact with any animal belonging to the individual.

~~(j)~~ **(m)** *A parolee may be responsible for the reasonable expenses, as determined by the department, of the parolee's participation in a treatment or other program required as a condition of parole under this section. However, a person's parole may not be revoked solely on the basis of the person's inability to pay for a program required as a condition of parole under this section.*

SECTION 2. IC 25-38.1-4-8.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.3. A veterinarian or registered veterinary technician may report a suspected incident of animal cruelty under IC 35-46-3 to a law enforcement officer.**

SECTION 3. IC 25-38.1-4-8.5, AS ADDED BY P.L.58-2008, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. A veterinarian or registered veterinary technician who reports in good faith and in the normal course of business a suspected incident of animal cruelty under ~~IC 35-46-3-12~~ **IC 35-46-3** to a law enforcement officer is immune from liability in any civil or criminal action brought for reporting the incident.

SECTION 4. IC 31-9-2-29.5, AS AMENDED BY P.L.171-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.

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- (3) Kidnapping or confinement under IC 35-42-3.
- (4) A sex offense under IC 35-42-4.
- (5) Robbery under IC 35-42-5.
- (6) Arson or mischief under IC 35-43-1.
- (7) Burglary or trespass under IC 35-43-2.
- (8) Disorderly conduct under IC 35-45-1.
- (9) Intimidation or harassment under IC 35-45-2.
- (10) Voyeurism under IC 35-45-4.
- (11) Stalking under IC 35-45-10.
- (12) An offense against the family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
- (13) Human and sexual trafficking crimes under IC 35-42-3.5.
- (14) A crime involving animal cruelty and a family or household member under ~~IC 35-46-3-12(b)(3)~~ **IC 35-46-3-12(b)(2)** or IC 35-46-3-12.5.

SECTION 5. IC 35-33-8-3.2, AS AMENDED BY P.L.104-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
 - (A) execute a bail bond with sufficient solvent sureties;
 - (B) deposit cash or securities in an amount equal to the bail;
 - (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
 - (D) post a real estate bond; or
 - (E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

- (2) Require the defendant to execute:
 - (A) a bail bond by depositing cash or securities with the clerk

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of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual **and, if applicable, any animal belonging to the individual**, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

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(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require the defendant to refrain from owning, harboring, or training an animal.

~~(8)~~ (9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

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SECTION 6. IC 35-38-2-2.3, AS AMENDED BY P.L.3-2008,
SECTION 249, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: Sec. 2.3. (a) As a condition of probation,
the court may require a person to do a combination of the following:

(1) Work faithfully at suitable employment or faithfully pursue a
course of study or career and technical education that will equip
the person for suitable employment.

(2) Undergo available medical or psychiatric treatment and
remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility established for the instruction,
recreation, or residence of persons on probation.

(4) Support the person's dependents and meet other family
responsibilities.

(5) Make restitution or reparation to the victim of the crime for
damage or injury that was sustained by the victim. When
restitution or reparation is a condition of probation, the court shall
fix the amount, which may not exceed an amount the person can
or will be able to pay, and shall fix the manner of performance.

(6) Execute a repayment agreement with the appropriate
governmental entity to repay the full amount of public relief or
assistance wrongfully received, and make repayments according
to a repayment schedule set out in the agreement.

(7) Pay a fine authorized by IC 35-50.

(8) Refrain from possessing a firearm or other deadly weapon
unless granted written permission by the court or the person's
probation officer.

(9) Report to a probation officer at reasonable times as directed
by the court or the probation officer.

(10) Permit the person's probation officer to visit the person at
reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted
permission to leave by the court or by the person's probation
officer.

(12) Answer all reasonable inquiries by the court or the person's
probation officer and promptly notify the court or probation
officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's
rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the
state department of health to detect and confirm the presence of

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the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) the person had been convicted of an offense relating to a controlled substance and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual **and, if applicable, any animal belonging to the individual.**

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Participate in a reentry court program.

(b) When a person is placed on probation, the person shall be given

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1 a written statement specifying:

2 (1) the conditions of probation; and

3 (2) that if the person violates a condition of probation during the
4 probationary period, a petition to revoke probation may be filed
5 before the earlier of the following:

6 (A) One (1) year after the termination of probation.

7 (B) Forty-five (45) days after the state receives notice of the
8 violation.

9 (c) As a condition of probation, the court may require that the
10 person serve a term of imprisonment in an appropriate facility at the
11 time or intervals (consecutive or intermittent) within the period of
12 probation the court determines.

13 (d) Intermittent service may be required only for a term of not more
14 than sixty (60) days and must be served in the county or local penal
15 facility. The intermittent term is computed on the basis of the actual
16 days spent in confinement and shall be completed within one (1) year.
17 A person does not earn credit time while serving an intermittent term
18 of imprisonment under this subsection. When the court orders
19 intermittent service, the court shall state:

20 (1) the term of imprisonment;

21 (2) the days or parts of days during which a person is to be
22 confined; and

23 (3) the conditions.

24 (e) Supervision of a person may be transferred from the court that
25 placed the person on probation to a court of another jurisdiction, with
26 the concurrence of both courts. Retransfers of supervision may occur
27 in the same manner. This subsection does not apply to transfers made
28 under IC 11-13-4 or IC 11-13-5.

29 (f) When a court imposes a condition of probation described in
30 subsection (a)(17):

31 (1) the clerk of the court shall comply with IC 5-2-9; and

32 (2) the prosecuting attorney shall file a confidential form
33 prescribed or approved by the division of state court
34 administration with the clerk.

35 (g) As a condition of probation, a court shall require a person:

36 (1) convicted of an offense described in IC 10-13-6-10;

37 (2) who has not previously provided a DNA sample in accordance
38 with IC 10-13-6; and

39 (3) whose sentence does not involve a commitment to the
40 department of correction;

41 to provide a DNA sample as a condition of probation.

42 SECTION 7. IC 35-41-1-6.5, AS AMENDED BY P.L.171-2007,

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SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) Human and sexual trafficking crimes under IC 35-42-3.5.
- (5) A sex offense under IC 35-42-4.
- (6) Robbery under IC 35-42-5.
- (7) Arson or mischief under IC 35-43-1.
- (8) Burglary or trespass under IC 35-43-2.
- (9) Disorderly conduct under IC 35-45-1.
- (10) Intimidation or harassment under IC 35-45-2.
- (11) Voyeurism under IC 35-45-4.
- (12) Stalking under IC 35-45-10.
- (13) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
- (14) A crime involving animal cruelty and a family or household member under ~~IC 35-46-3-12(b)(3)~~ **IC 35-46-3-12(b)(2)** or IC 35-46-3-12.5.

SECTION 8. IC 35-46-3-0.5, AS ADDED BY P.L.171-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 0.5. The following definitions apply throughout this chapter:

- (1) "Abandon" means to desert an animal or to leave the animal permanently in a place without making provision for adequate long term care of the animal. The term does not include leaving an animal in a place that is temporarily vacated for the protection of human life during a disaster.
- (2) "Beat" means to unnecessarily or cruelly strike an animal, or to throw the animal against an object causing the animal to suffer severe pain or injury. The term does not include reasonable training or disciplinary techniques.
- (3) **"Domestic animal" means an animal that is not wild. The term is limited to:**
 - (A) **cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and**
 - (B) **an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species.**
- ~~(3)~~ (4) "Mutilate" means to wound, injure, maim, or disfigure an

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animal by irreparably damaging the animal's body parts or to render any part of the animal's body useless. The term includes bodily injury involving:

- (A) serious permanent disfigurement;
- (B) serious temporary disfigurement;
- (C) permanent or protracted loss or impairment of the function of a bodily part or organ; or
- (D) a fracture.

~~(4)~~ **(5)** "Neglect" means: ~~to:~~

(A) ~~endanger any form of neglect that endangers~~ an animal's health; ~~by failing to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink; or~~

(B) ~~restrain~~ **restraining** an animal for more than a brief period **in a manner that endangers the animal's life or health** by the use of a rope, chain, or tether that:

- (i) is less than three (3) times the length of the animal;
- (ii) is too heavy to permit the animal to move freely; or
- (iii) causes the animal to choke;

(C) **restraining the animal in a manner that causes the animal to suffer serious permanent disfigurement, serious temporary disfigurement, permanent or protracted loss or impairment of the function of a bodily part or organ, or a fracture;**

(D) **failing to provide reasonable medical care for an animal's injury or illness; or**

(E) **leaving an animal outside exposed to:**

- (i) **excessive heat without providing the animal with a means of shade from the heat; or**
- (ii) **excessive cold if the animal is not provided with straw or another means of protection from the cold;**

regardless of whether the animal is restrained or kept in a kennel.

~~(5)~~ **(6)** "Torture" means:

(A) to inflict extreme physical pain or injury on an animal with the ~~sole~~ intent of increasing or prolonging the animal's pain; or

(B) to administer poison to a ~~cat or dog~~, **vertebrate animal**, or expose a ~~cat or dog~~ **vertebrate animal** to a poisonous substance with the intent that the ~~cat or dog~~ **vertebrate animal** ingest the substance and suffer harm, pain, or physical injury.

SECTION 9. IC 35-46-3-5, AS AMENDED BY P.L.2-2008,

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SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

- (1) Fishing, hunting, trapping, or other conduct authorized under IC 14-22.
- (2) Conduct authorized under IC 15-20-2.
- (3) Veterinary practices authorized by standards adopted under IC 25-38.1-2-14.
- (4) Conduct authorized by a local ordinance.
- (5) Acceptable farm management practices.
- (6) Conduct authorized by IC 15-17-5, and rules adopted under IC 15-17-5 for state or federally inspected livestock slaughtering facilities.
- (7) A research facility registered with the United States Department of Agriculture under the federal Animal Welfare Act (7 U.S.C. 2131 et seq.).
- (8) Destruction of a vertebrate defined as a pest under IC 15-16-5-24.
- (9) Destruction of or injury to a fish.
- (10) Destruction of a vertebrate animal that is:
 - (A) endangering, harassing, or threatening livestock or a domestic animal; or
 - (B) destroying or damaging a person's property.
- (11) Destruction of an animal by an animal control program, including an animal control facility, an animal shelter, or a humane society.**

(b) Section 1 of this chapter applies to conduct described in subsection (a).

(c) Destruction of an animal by electrocution is authorized under this section only if it is conducted by a person who is engaged in an acceptable farm management practice, by a research facility registered with the United States Department of Agriculture under the Animal Welfare Act, or for the animal disease diagnostic laboratory established under IC 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university.

SECTION 10. IC 35-46-3-7, AS AMENDED BY P.L.171-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A person who: ~~owns~~

- (1) **has a vertebrate animal in the person's custody;** and
- (2) ~~who~~ recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a ~~Class B misdemeanor~~. **Class A**

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1 **misdemeanor. However, except for a conviction under section 1 of**
 2 **this chapter, the offense is a Class D felony if the person has a prior**
 3 **unrelated conviction under this chapter.**

4 (b) It is a defense to a prosecution **for abandoning a vertebrate**
 5 **animal** under this section that the ~~owner~~ **person who had the animal**
 6 **in the person's custody** reasonably believed that the vertebrate animal
 7 was capable of surviving on its own.

8 SECTION 11. IC 35-46-3-10 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A person who
 10 knowingly or intentionally attends a fighting contest involving animals
 11 commits cruelty to an animal, a Class A misdemeanor. **However,**
 12 **except for a conviction under section 1 of this chapter, the offense**
 13 **is a Class D felony if the person has a prior unrelated conviction**
 14 **under this chapter.**

15 SECTION 12. IC 35-46-3-12, AS AMENDED BY P.L.171-2007,
 16 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2009]: Sec. 12. (a) This section does not apply to a person
 18 who euthanizes an injured, a sick, a homeless, or an unwanted domestic
 19 animal if:

20 (1) the person is employed by a humane society, an animal control
 21 agency, or a governmental entity operating an animal shelter or
 22 other animal impounding facility; and

23 (2) the person euthanizes the domestic animal in accordance with
 24 guidelines adopted by the humane society, animal control agency,
 25 or governmental entity operating the animal shelter or other
 26 animal impounding facility.

27 (b) A person who knowingly or intentionally beats a vertebrate
 28 animal commits cruelty to an animal, a Class A misdemeanor.
 29 However, the offense is a Class D felony if:

30 (1) the person has a previous, unrelated conviction under this
 31 section; **or**

32 ~~(2) the person knowingly or intentionally tortures or mutilates a~~
 33 ~~vertebrate animal; or~~

34 ~~(3)~~ (2) the person committed the offense with the intent to
 35 threaten, intimidate, coerce, harass, or terrorize a family or
 36 household member.

37 (c) **A person who knowingly or intentionally tortures or**
 38 **mutilates a vertebrate animal commits torturing or mutilating a**
 39 **vertebrate animal, a Class D felony.**

40 (d) **A person who knowingly or intentionally kills a domestic**
 41 **animal without the consent of the owner of the domestic animal**
 42 **commits killing a domestic animal, a Class D felony.**

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1 ~~(c)~~ (e) It is a defense to a prosecution under this section that the
 2 accused person:

3 (1) reasonably believes the conduct was necessary to:

4 (A) prevent injury to the accused person or another person;

5 (B) protect the property of the accused person from destruction
 6 or substantial damage; or

7 (C) prevent a seriously injured vertebrate animal from
 8 prolonged suffering; or

9 (2) engaged in a reasonable and recognized act of training,
 10 handling, or disciplining the vertebrate animal.

11 ~~(d)~~ (f) When a court imposes a sentence or enters a dispositional
 12 decree under this section, ~~concerning a person described in subdivision~~
 13 ~~(1)~~, the court:

14 (1) shall consider requiring:

15 (A) a person convicted of an offense under this section; or

16 (B) a child adjudicated a delinquent child for committing an
 17 act that would be a crime under this section if committed by an
 18 adult;

19 to receive psychological, behavioral, or other counseling as a part
 20 of the sentence or dispositional decree; and

21 (2) may order an individual described in subdivision (1) to receive
 22 psychological, behavioral, or other counseling as a part of the
 23 sentence or dispositional decree.

24 SECTION 13. [EFFECTIVE JULY 1, 2009] IC 35-46-3-0.5,
 25 IC 35-46-3-7, IC 35-46-3-10, and IC 35-46-3-12, all as amended by
 26 this act, apply only to crimes committed after June 30, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 238, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 15, delete "physically" and insert "**causes**".

Page 2, line 16, delete "harms".

Page 2, line 16, after "animal" insert "**to suffer serious permanent disfigurement, serious temporary disfigurement, permanent or protracted loss or impairment of the function of a bodily part or organ, or a fracture**".

and when so amended that said bill do pass.

(Reference is to SB 238 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 238, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning animals.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 11-13-3-4, AS AMENDED BY P.L.46-2008, SECTION 1, AND AS AMENDED BY P.L.119-2008, SECTION 10, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A condition to remaining on parole is that the parolee not commit a crime during the period of parole.

(b) The parole board may also adopt, under IC 4-22-2, additional conditions to remaining on parole and require a parolee to satisfy one (1) or more of these conditions. These conditions must be reasonably related to the parolee's successful reintegration into the community and

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not unduly restrictive of a fundamental right.

(c) If a person is released on parole, the parolee shall be given a written statement of the conditions of parole. Signed copies of this statement shall be:

- (1) retained by the parolee;
- (2) forwarded to any person charged with the parolee's supervision; and
- (3) placed in the parolee's master file.

(d) The parole board may modify parole conditions if the parolee receives notice of that action and had ten (10) days after receipt of the notice to express the parolee's views on the proposed modification. This subsection does not apply to modification of parole conditions after a revocation proceeding under section 10 of this chapter.

(e) As a condition of parole, the parole board may require the parolee to reside in a particular parole area. In determining a parolee's residence requirement, the parole board shall:

- (1) consider:
 - (A) the residence of the parolee prior to the parolee's incarceration; and
 - (B) the parolee's place of employment; and
- (2) assign the parolee to reside in the county where the parolee resided prior to the parolee's incarceration unless assignment on this basis would be detrimental to the parolee's successful reintegration into the community.

(f) As a condition of parole, the parole board may require the parolee to:

- (1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9); and
- (2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

- (1) may require a parolee who is a sex offender (as defined in IC 11-8-8-4.5) to:
 - (A) participate in a treatment program for sex offenders approved by the parole board; and
 - (B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

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- (i) receives the parole board's approval; or
- (ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5) to register with a local law enforcement authority under IC 11-8-8;

(B) prohibit a parolee who is a sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole, unless the sex offender obtains written approval from the parole board;

(C) prohibit a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the sex offender's sex offense unless the sex offender obtains a waiver under IC 35-38-2-2.5;

and

(D) prohibit a parolee who is a sex offender from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age;

(E) require a parolee who is a sex offender to consent:

(i) to the search of the sex offender's personal computer at any time; and

(ii) to the installation on the sex offender's personal computer or device with Internet capability, at the sex offender's expense, of one (1) or more hardware or software systems to monitor Internet usage; and

(F) prohibit the sex offender from:

(i) accessing or using certain web sites, chat rooms, or instant messaging programs frequented by children; and

(ii) deleting, erasing, or tampering with information on the sex offender's personal computer with intent to conceal an activity prohibited by item (i).

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) or a sex offender who is an offender against children under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

(h) The address of the victim of a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) is

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confidential, even if the sex offender obtains a waiver under IC 35-38-2-2.5.

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

(j) As a condition of parole, the parole board:

(1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and

(2) may require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5);

to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location.

(k) As a condition of parole, the parole board may prohibit, in accordance with IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

(l) As a condition of parole, the parole board may prohibit a parolee from owning, harboring, or training an animal, and, if the parole board prohibits a parolee from having direct or indirect contact with an individual, the parole board may also prohibit the parolee from having direct or indirect contact with any animal belonging to the individual.

~~(m)~~ **(m)** *A parolee may be responsible for the reasonable expenses, as determined by the department, of the parolee's participation in a treatment or other program required as a condition of parole under this section. However, a person's parole may not be revoked solely on the basis of the person's inability to pay for a program required as a condition of parole under this section.*

SECTION 2. IC 25-38.1-4-8.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.3. A veterinarian or registered veterinary technician may report a suspected incident of animal cruelty under IC 35-46-3 to a law enforcement officer.**

SECTION 3. IC 25-38.1-4-8.5, AS ADDED BY P.L.58-2008, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.5. A veterinarian or registered veterinary technician who reports in good faith and in the normal course of business a suspected incident of animal cruelty under ~~IC 35-46-3-12~~ IC 35-46-3 to a law enforcement officer is immune from liability in any civil or criminal action brought for reporting the incident.**

SECTION 4. IC 31-9-2-29.5, AS AMENDED BY P.L.171-2007,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) A sex offense under IC 35-42-4.
- (5) Robbery under IC 35-42-5.
- (6) Arson or mischief under IC 35-43-1.
- (7) Burglary or trespass under IC 35-43-2.
- (8) Disorderly conduct under IC 35-45-1.
- (9) Intimidation or harassment under IC 35-45-2.
- (10) Voyeurism under IC 35-45-4.
- (11) Stalking under IC 35-45-10.
- (12) An offense against the family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
- (13) Human and sexual trafficking crimes under IC 35-42-3.5.
- (14) A crime involving animal cruelty and a family or household member under ~~IC 35-46-3-12(b)(3)~~ IC 35-46-3-12(b)(2) or IC 35-46-3-12.5.

SECTION 5. IC 35-33-8-3.2, AS AMENDED BY P.L.104-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
 - (A) execute a bail bond with sufficient solvent sureties;
 - (B) deposit cash or securities in an amount equal to the bail;
 - (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
 - (D) post a real estate bond; or
 - (E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the

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defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual **and, if applicable, any animal belonging to the individual**, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

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(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require the defendant to refrain from owning, harboring, or training an animal.

~~(8)~~ (9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the

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county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

- (1) the clerk of the court shall comply with IC 5-2-9; and
- (2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 6. IC 35-38-2-2.3, AS AMENDED BY P.L.3-2008, SECTION 249, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- (4) Support the person's dependents and meet other family responsibilities.
- (5) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.
- (6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
- (7) Pay a fine authorized by IC 35-50.
- (8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
- (9) Report to a probation officer at reasonable times as directed by the court or the probation officer.
- (10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.
- (11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.
- (12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation

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officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) the person had been convicted of an offense relating to a controlled substance and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual **and, if applicable, any animal belonging to the individual.**

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the

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person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Participate in a reentry court program.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) As a condition of probation, a court shall require a person:

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- (1) convicted of an offense described in IC 10-13-6-10;
- (2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and
- (3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

SECTION 7. IC 35-41-1-6.5, AS AMENDED BY P.L.171-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) Human and sexual trafficking crimes under IC 35-42-3.5.
- (5) A sex offense under IC 35-42-4.
- (6) Robbery under IC 35-42-5.
- (7) Arson or mischief under IC 35-43-1.
- (8) Burglary or trespass under IC 35-43-2.
- (9) Disorderly conduct under IC 35-45-1.
- (10) Intimidation or harassment under IC 35-45-2.
- (11) Voyeurism under IC 35-45-4.
- (12) Stalking under IC 35-45-10.
- (13) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
- (14) A crime involving animal cruelty and a family or household member under ~~IC 35-46-3-12(b)(3)~~ **IC 35-46-3-12(b)(2)** or IC 35-46-3-12.5."

Page 1, between lines 13 and 14, begin a new line block indented and insert:

(3) "Domestic animal" means an animal that is not wild. The term is limited to:

- (A) cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and**
- (B) an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species."**

Page 1, line 14 strike "(3)" and insert **"(4)"**.

Page 2, line 6, strike "(4)" and insert **"(5)"**.

Page 2, line 6, after "means" insert: **":"**.

Page 2, line 6, strike "to:".

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Page 2, line 7, strike "endanger" and insert **"any form of neglect that endangers"**.

Page 2, line 7, after "health" insert ";".

Page 2, line 7, strike "by failing to provide the".

Page 2, strike line 8.

Page 2, line 9, strike "person for the provision of food or drink;".

Page 2, line 10, strike "restrain" and insert **"restraining"**.

Page 2, line 10, after "period" insert **"in a manner that endangers the animal's life or health"**.

Page 2, line 14, delete "or".

Page 2, line 15, delete "(iv) restrains", begin a new line double block indented, and insert:

"(C) restraining".

Page 2, line 19, delete "." and insert ";

(D) failing to provide reasonable medical care for an animal's injury or illness; or

(E) leaving an animal outside exposed to:

(i) excessive heat without providing the animal with a means of shade from the heat; or

(ii) excessive cold if the animal is not provided with straw or another means of protection from the cold;

regardless of whether the animal is restrained or kept in a kennel."

Page 2, line 20, strike "(5)" and insert **"(6)"**.

Page 2, line 22, strike "sole".

Page 2, line 23, after "to a" strike "cat or dog," and insert **"vertebrate animal,"**.

Page 2, line 23, after "expose a" strike "cat or dog" and insert **"vertebrate animal"**.

Page 2, line 24, strike "cat or dog" and insert **"vertebrate animal"**.

Page 2, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 13. IC 35-46-3-5, AS AMENDED BY P.L.2-2008, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

(1) Fishing, hunting, trapping, or other conduct authorized under IC 14-22.

(2) Conduct authorized under IC 15-20-2.

(3) Veterinary practices authorized by standards adopted under IC 25-38.1-2-14.

(4) Conduct authorized by a local ordinance.

(5) Acceptable farm management practices.

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(6) Conduct authorized by IC 15-17-5, and rules adopted under IC 15-17-5 for state or federally inspected livestock slaughtering facilities.

(7) A research facility registered with the United States Department of Agriculture under the federal Animal Welfare Act (7 U.S.C. 2131 et seq.).

(8) Destruction of a vertebrate defined as a pest under IC 15-16-5-24.

(9) Destruction of or injury to a fish.

(10) Destruction of a vertebrate animal that is:

(A) endangering, harassing, or threatening livestock or a domestic animal; or

(B) destroying or damaging a person's property.

(11) Destruction of an animal by an animal control program, including an animal control facility, an animal shelter, or a humane society.

(b) Section 1 of this chapter applies to conduct described in subsection (a).

(c) Destruction of an animal by electrocution is authorized under this section only if it is conducted by a person who is engaged in an acceptable farm management practice, by a research facility registered with the United States Department of Agriculture under the Animal Welfare Act, or for the animal disease diagnostic laboratory established under IC 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university.

SECTION 14. IC 35-46-3-7, AS AMENDED BY P.L.171-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A person who: ~~owns~~

(1) has a vertebrate animal in the person's custody; and

(2) who recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a ~~Class B misdemeanor~~. **Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter.**

(b) It is a defense to a prosecution **for abandoning a vertebrate animal** under this section that the ~~owner~~ **person who had the animal in the person's custody** reasonably believed that the vertebrate animal was capable of surviving on its own.

SECTION 15. IC 35-46-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A person who knowingly or intentionally attends a fighting contest involving animals

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commits cruelty to an animal, a Class A misdemeanor. **However, except for a conviction under section 1 of this chapter, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter.**

SECTION 16. IC 35-46-3-12, AS AMENDED BY P.L.171-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) This section does not apply to a person who euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if:

- (1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and
- (2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.

(b) A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Class D felony if:

- (1) the person has a previous, unrelated conviction under this section; **or**
- ~~(2) the person knowingly or intentionally tortures or mutilates a vertebrate animal; or~~
- ~~(3)~~ **(2)** the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

(c) A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Class D felony.

~~(c)~~ **(d) A person who knowingly or intentionally kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Class D felony.**

(e) It is a defense to a prosecution under this section that the accused person:

- (1) reasonably believes the conduct was necessary to:
 - (A) prevent injury to the accused person or another person;
 - (B) protect the property of the accused person from destruction or substantial damage; or
 - (C) prevent a seriously injured vertebrate animal from prolonged suffering; or
- (2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.

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~~(d)~~ (f) When a court imposes a sentence or enters a dispositional decree under this section, ~~concerning a person described in subdivision (t);~~ the court:

(1) shall consider requiring:

(A) a person convicted of an offense under this section; or

(B) a child adjudicated a delinquent child for committing an act that would be a crime under this section if committed by an adult;

to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree; and

(2) may order an individual described in subdivision (1) to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree."

Page 2, line 26, after "IC 35-46-3-0.5," insert **"IC 35-46-3-7, IC 35-46-3-10, and IC 35-46-3-12, all as amended by this act, apply only to crimes committed after June 30, 2009."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 238 as printed February 20, 2009.)

LAWSON L, Chair

Committee Vote: yeas 8, nays 1.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 238 be amended to read as follows:

Page 12, line 18, reset in roman "or".

Page 14, line 40, delete "(c)".

Page 15, line 1, delete "(e)" and insert "~~(c)~~ (e)".

Page 15, line 26, delete "as".

Page 15, delete lines 27 through 28.

(Reference is to ESB 238 as printed April 3, 2009.)

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